

DARRELL TURNER

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NO. 2014-CA-0240

VERSUS

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COURT OF APPEAL

**HIDDEN LAKE, LLC OF AL
AND LIBERTY SURPLUS
INSURANCE CORPORATION.**

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FOURTH CIRCUIT

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STATE OF LOUISIANA

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TOBIAS, J., CONCURS IN PART AND DISSENTS IN PART.

As a matter of law, as alleged, the leaking water is not a continuing tort such that the supplemental and amending petition alleging the plaintiff's second fall relates back to the date of the filing of the original petition. I therefore concur in that part of the majority's decision.

However, the plaintiff's first fall that allegedly caused injuries may have created the proverbial "eggshell plaintiff" whose second fall was precipitated by injuries sustained in his first fall, potentially making the defendants liable for damages for the injuries sustained in the second fall. The record on appeal contains insufficient evidence addressing the issue. Ergo, it is premature to rule upon the prescription exception. I therefore dissent in part from the majority decision that the second claim is entirely prescribed.